



**PERFORMANCE
ENVELOPE
PROGRAM
GUIDELINES
2015-2016**

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1. GENERAL INFORMATION

Interpretation, Application, Disclaimer, and other Important Information

These Guidelines are for the information and convenience of Applicants (as defined in [section 3.1](#)) to the Canada Media Fund (CMF). They provide an overview of the objectives of the CMF, the manner in which the CMF is administered, and information on typical administrative practices of the CMF. Compliance with these Guidelines is a prerequisite to eligibility for any CMF funding.

The CMF has full discretion in the administration of its programs, and in the application of these Guidelines, to ensure funding is provided to those projects that contribute to the fulfillment of its mandate. In all questions of interpretation of these Guidelines, the CMF interpretation shall prevail.

All Applicants and broadcasters (where relevant) must abide by the Accounting and Reporting Requirements (ARR) of the CMF and follow applicable business policies as created and amended from time to time. Business policies, including the ARR, may be found in Appendix B of these Guidelines and are also available from the CMF website at www.cmf-fmc.ca. Information included in Appendices A and B is an integral part of these Guidelines.

Projects that receive CMF funding in a given year are subject to the Guidelines and CMF policies in effect for that fiscal year. To be clear, changes to CMF Guidelines and/or policies made in a subsequent fiscal year will not apply retroactively, unless specifically stated. The CMF fiscal year is April 1 to March 31.

Please note: These Guidelines may be changed or modified as required, without notice. Please consult the CMF website at www.cmf-fmc.ca for the latest Guideline news and documentation.

Provision of Documentation

It is the responsibility of the Applicant to ensure that the CMF receives all relevant documentation and to update such documentation and information after a material change. The CMF may request other documentation and information conduct an assessment and evaluation of the project and, once assessed, to complete CMF file reviews. For the purposes of project assessment and evaluation, the CMF reserves the right to rely solely on the written and audiovisual materials initially submitted by the Applicant.

Failure to Comply

If an Applicant fails to comply with these Guidelines, as determined by the CMF, then the CMF may refuse the application, revoke the eligibility status of the Applicant's project and may demand repayment of any sums paid to the Applicant.

Misrepresentation

If, at any time, an Applicant, as required by the Guidelines or as requested by the CMF, provides false information or omits material information in connection with an application, the Applicant may suffer serious consequences. These may include, among others outcomes:

- Loss of eligibility for funding of the current project
- Loss of eligibility for funding of future productions
- Repayment of any funds already advanced, with interest
- Criminal prosecution, in the case of fraud

These measures may be imposed not only on the Applicant but also on related, associated and affiliated companies and individuals (as determined by the CMF at its sole discretion). Any Applicant receiving approval for funding will be required to sign a legally enforceable agreement, which includes further provisions concerning misrepresentations, defaults, and related matters.

2. HOW THE PERFORMANCE ENVELOPE PROGRAM WORKS

HOW TO READ THESE GUIDELINES

Projects in the Convergent Stream may involve both a Television Component and one or more Digital Media Components. The eligibility and technical requirements for these two components may be very different. In these Guidelines, sections dealing with requirements for the Television Component use “.TV” in their section number, and sections dealing with requirements for the Digital Media Component use “.DM”. Sections dealing with requirements for the entire convergent project – i.e. the Television Component and, where applicable, the Digital Media Component – simply use a section number without “.TV” or “.DM”.

2.1 INTRODUCTION

The Performance Envelope Program, which forms part of the CMF’s Convergent Stream, allocates funding envelopes to Canadian broadcasters, who are in the best position to decide which projects could have the greatest market success. The envelope mechanism enables the CMF to disburse funds in a timely, efficient, and market-driven manner in partnership with Canadian broadcasters. Although envelopes are allocated to broadcasters, CMF funding is disbursed directly to producers.

Eligible Projects (see [section 3.2](#)) in the Performance Envelope Program must be convergent, meaning: they must have a Television Component (see [section 3.2.TV](#)) and one or more Digital Media Components (see [section 3.2.DM](#)), VOD presentation of the Television Component, digital distribution of the Television Component, or any combination of these three. The CMF contributes to Eligible Projects in this Program through Performance Envelopes, which are allocations of CMF program funds made to Canadian broadcasters with a track record of supporting Canadian programming. Broadcasters select which Eligible Projects may receive funds from their Performance Envelope up to the limit of the funds allocated to them and subject to per-project Maximum Contribution amounts (see [section 2.3.1](#)) and other specified limitations. Broadcasters are free to use their Performance Envelopes to fund both eligible Television Components and Digital Media Components (see [section 2.3.1](#)).

To be funded from a Performance Envelope, a project must meet all eligibility and genre requirements under the CMF Guidelines. Digital Media Components seeking CMF funding must receive minimum financing from a Canadian broadcaster (see [section 3.2.DM.4](#)). Television Components must receive Eligible Licence Fees (see [section 3.2.TV.5](#)) that meet the applicable Licence Fee Threshold amount (and [3.2.TV.5.1](#)). Maximum Contribution and Licence Fee Threshold amounts, as applicable, are calculated on a project’s Eligible Costs (see [section 2.3.2](#)).

For information on the administration of Performance Envelopes, including Performance Envelope calculation methodology, genre allocations and flexibility, transfer policies, and other information, please see the Performance Envelope Manual available on the CMF’s website at www.cmf-fmc.ca.

2.1.1 Definitions Applicable to the Performance Envelope Program: In-house Programming, Affiliated Programming, and Regional Production

A broadcaster-affiliated production company is an Applicant, as defined in section 3.1(1), that is affiliated with a Canadian broadcaster (the CMF uses the definition of “Affiliate” set out in the Canada Business Corporations Act). Affiliated Programming covers projects produced by a broadcaster-affiliated production company and licensed by its affiliated broadcaster(s). In-house Programming comprises projects produced and owned by a Canadian broadcaster. Broadcasters are limited in the amount of their Performance Envelope they are permitted to commit on Affiliated Programming and In-house Programming. Broadcasters may commit up to 7.5% of their documentary allocation to in-house and affiliated programming within that genre. Broadcasters may commit up to 15% of their combined drama,

children's and youth, variety and performing arts, and flex amounts to in-house and/or affiliated programming in those three genres. Broadcasters whose combined corporate group performance envelope allocation is under \$5 million and Educational Broadcasters are exempt from this rule (see section G.6 of the [Performance Envelope Manual](#)).

For the purposes of the Performance Envelope Program, "regions" are defined for English-language productions as any part of Canada more than 150 km by the shortest reasonable roadway route from Toronto, and for French-language productions as any part of Canada more than 150 km by the shortest reasonable roadway route from Montreal. The CMF defines a Regional Production as follows:

- a) Principal photography for the Television Component occurs in the regions, with suitable exceptions for documentaries.
- b) The Applicant (or whichever Applicant owns rights to the Television Component if there are separate Applicants for Television and Digital Media) is based in the regions (with its head office in the regions). The applicant:
 - i) Exercises full control of the creative, artistic, technical and financial aspects of the Television Component, or, in the case of a regional/non-regional coproduction, the regional Applicant has such control in proportion to its copyright ownership.
 - ii) In the case of a regional/non-regional coproduction, the regional Applicant owns at least 51% of the copyright of the Television Component.
 - iii) In the case of a regional/non-regional coproduction, the regional Applicant shares equitably in fees payable to producers and corporate overhead.
 - iv) Initially owns and controls the distribution rights to the Television Component and retains an ongoing financial interest in the Television Component or, in the case of a regional/non-regional coproduction, the markets and potential revenues are shared equitably in proportion to the financial participation of each coproducer.
 - v) Has meaningfully participated in the Television Component's development.

Where the control and central decision makers in the Television Component are located outside of the regions, the project is not considered to be a Regional Production.

2.1.2 Applicable Language Category of the Television Component and Double Shoots

In the Performance Envelope Program, the CMF applies different Licence Fee Threshold amounts, Maximum Contribution amounts, Maximum Terms and other calculations depending on the original language of production of the Television Component of the project.

Eligible Projects may receive contributions from both a French-language Performance Envelope and an English-language Performance Envelope. In such a case:

- a) Where a project is simultaneously shot in English and French (a double shoot), the original language of production is considered both languages: English and French. As such, the Eligible Costs of the project will be divided so that two-thirds of the Eligible Costs represent the English-language portion and one-third the French-language portion. Each portion shall be subject to the Licence Fee Threshold and Maximum Contribution amounts of its respective language category. Consequently, the French- and English-language broadcasters' licences shall each meet the Licence Fee Threshold requirements applicable to its respective portion of the Eligible Costs, and each broadcaster shall be subject to the Maximum Contribution amounts applicable to that portion. Applicable Performance Envelope calculations will be based on the specific Eligible Costs portion to which they were related.

- b) In all other cases, the applicable language category is a single language determined by the original language of production of the project. Where a project is versioned into another language, the language into which the project was versioned is not the original language of production.

2.2 NATURE OF FUNDING CONTRIBUTION

The Performance Envelope Program may provide: to the Television Component, a mix of licence fee top-ups and equity investments according to a set formula, and to the Digital Media Component, a non-repayable contribution.

A licence fee top-up supplements a successful Applicant's Canadian broadcaster cash licence fees. This type of contribution forms part of the broadcaster's licence fee for the Television Component and is non-recoupable. An equity investment is a cash investment in the project, which results in the CMF acquiring an undivided copyright ownership interest in all versions of the project. Equity investments are recoupable, and subject to a standard and non-negotiable recoupment schedule, as described and subject to, any exceptions in the CMF Standard Recoupment Policy (see [Appendix B](#)).

For series in their first season, the first CMF contribution to the Television Component will be in the form of a licence fee top-up, to a maximum of 20% of the component's Eligible Costs. From the second season of such series, the maximum CMF contribution in the form of a licence fee top-up will decrease by 2% per annum for English series and by 1% per annum for French series. The CMF maximum contribution in the form of a licence fee top-up will stop decreasing when a 10% threshold will be reached for English series or 15% for French series.

However, for series for which the first season was produced before 2014-2015, the first CMF contribution to the Television Component for subsequent seasons will be in the form of a licence fee top-up, to a maximum of 20% of the component's Eligible Costs; however, no decrease of the percentage of this contribution will be applied.

The term "season" applies to each season produced, whether or not it was funded by the CMF.

Amounts in excess of this maximum will be in the form of an equity investment up to a maximum of 49% of Eligible Costs, licence fee top-up and equity investment combined. The CMF considers an eligible equity investment request of less than \$100,000 too small for equity participation. Such requests will be automatically converted to a licence fee top-up.

CMF contributions may be combined in the financing of each component of an Eligible Project from more than one Performance Envelope. The total combined CMF contribution committed from all Performance Envelopes must respect any applicable Maximum Contribution amounts; for the Television Component, the total combined CMF contribution committed from all Performance Envelopes must respect the licence fee top-up and equity investment split described above.

2.3 AMOUNT OF FUNDING CONTRIBUTION

2.3.1 Performance Envelope Contribution

Broadcasters can decide what proportion of their Performance Envelope to allot to each component of an Eligible Project, up to specified Maximum Contribution amounts. Broadcasters may allot a Performance Envelope contribution to the Television Component, one or more Digital Media Components, or all components.

For the Television Component, the Maximum Contribution is 49% of the component's Eligible Costs.

For the Digital Media Component(s), the Maximum Contribution is 75% of a component's Eligible Costs or \$500,000, whichever is less. Where there are multiple Digital Media Components (e.g. a website, a mobile application, and a game), the \$500,000 Maximum Contribution applies to each eligible component.

There are no minimum Performance Envelope contribution amounts to either the Television or the Digital Media Component.

For audiovisual treaty coproductions, the CMF Maximum Contribution for the Television Component will be calculated on the lesser of the Eligible Costs of the Canadian portion of the Television Component's global budget and the Eligible Costs of the Canadian portion of the global final costs of the Television Component, as certified by Telefilm Canada's Business Affairs and Certification Department.

2.3.1.1.TV Quebec French Regional Production Incentive

French-language productions meeting the definition of a Regional Production (see [section 2.1.1](#)) and produced by an Applicant with its head office in the province of Quebec are eligible for the Quebec French Regional Production Incentive.

The incentive will take the form of a CMF licence fee top-up contribution of 10% of the Television Component's Eligible Costs to a per-project maximum of \$150,000. This incentive will be awarded to Eligible Projects on a first-come, first-served basis. It will be awarded directly by the CMF separately, and in addition to what was awarded by the broadcaster through its Performance Envelope. The incentive must be applied to the Eligible Costs of the Television Component.

The Television Component is 100% financed at application (including the Quebec French Regional Production Incentive and any other CMF financing).

2.3.2 Eligible Costs

Eligible Costs are costs set out in the production budget for each component of the Eligible Project or the final cost report as applicable (including both related-party and non-related-party costs) – plus costs the CMF considers necessary and minus costs the CMF considers excessive, inflated or unreasonable. Assessment of a project's Eligible Costs is at the CMF's sole discretion. CMF participation is calculated on the Eligible Costs of each component. The CMF estimates Eligible Costs at the time of application, based on budgets for the project. Eligible Costs may include cost increases between budget and final costs approved by a broadcaster contributing an Eligible Licence Fee, but excludes increases which have not been so approved.

Additional CMF business policies relating to Eligible Costs are in [Appendix B](#) of this document.

The Television Component and the Digital Media Component(s) must have separate budgets reflecting the distinct work done on each. The following subsections of [2.3.2](#) relate specifically to the Television and Digital Media Components.

2.3.2.1 Related-Party Transactions

All related-party fees, related-party allowances and any other related-party transactions must be:

- a) Disclosed to the CMF
- b) In accordance with the current CMF Accounting and Reporting Requirements

2.3.2.TV.1 Versioning

For projects licensed, or which will be licensed, for Canadian broadcast in the other official language (English or French, as applicable) – prior to delivery of the project to the first window Canadian broadcaster – the CMF requires all versioning (i.e. dubbing or subtitling) be performed in Canada using Canadian artists, actors, employees and technicians (as applicable). Exceptions may be made in the case of audiovisual treaty coproductions.

The CMF requires that versioning costs be included in the budget if it is required contractually by one of the Canadian financiers. The CMF will not support versioning costs normally incurred by distributors to assist in foreign market sales through this Program.

2.3.2.TV.2 Marketing Expenses

Eligible Costs may include:

- Unit publicity expenses incurred during production (e.g. production photographs, hiring a publicist to arrange interviews)
- Digital media/viral marketing campaigns
- Attendance at national and international media markets to generate sales or other revenues from the Eligible Project
- Submission/registration of the Television Component to an awards show/event
- Expenses related to search engine optimization

For the Television Component, eligible marketing expenses cannot exceed 3% of Categories B+C of the production budget.

All marketing expenses should be allocated to budget line item # 70 in the production budget.

Non-eligible marketing costs include:

- Costs already financed or paid for by another financier or funding body;
- Wrap party;
- Crew gifts;
- Gifts to the Public (e.g., t-shirts, mugs);
- Basic website

2.3.2.TV.3 Pilots and Series

Eligible Costs for a series may include costs related to enhancements to a previously produced pilot where the series is consequent to that pilot.

2.3.2.TV.4 Prizes

Any prize that is won, awarded, presented, or granted to individuals in connection with any CMF-funded production, in any genre, shall be an ineligible cost, even if such prize is deemed to be educational in nature.

2.3.2.DM.1 Digital Media Costs

Eligible Costs for the Digital Media Component(s) may include marketing expenses as described above for the Television Component in [section 2.3.2.TV.2](#) (including rules related to ineligibility of already financed costs).

For Digital Media Components, eligible marketing expenses cannot exceed 15% of Categories A+B of the production budget.

Marketing expenses should be allocated to budget line item # GEN-23 in the production budget.

Eligible Costs may include budgeted upkeep and enhancement costs related to a period of up to 12 months after the launch of the Digital Media Component.

3. ELIGIBILITY FOR FUNDING

3.1 ELIGIBLE APPLICANTS

An Applicant to the CMF is either:

- 1) A company that:
 - a) Is a for-profit (i.e. a taxable Canadian corporation, within the meaning of Canada's Income Tax Act) production company
 - b) Is Canadian-controlled as determined in sections 26 to 28 of the Investment Canada Act
 - c) Has its head office in Canadaor
- 2) A Canadian broadcaster, public or private, licensed to operate by the Canadian Radio-television and Telecommunications Commission (CRTC), including a CRTC-licensed VOD service.

Applicants must own and control all rights necessary to produce and exploit the Eligible Project or applicable component(s) of the Eligible Project. Entities that provide services but do not own applicable rights are not eligible to apply to the CMF.

Note: For the purposes of these Guidelines, the term "Applicant" includes all coapplicants and/or parent companies as applicable.

3.2 ELIGIBLE PROJECTS

An "Eligible Project" in this Program is a project that meets all section 3.2 criteria and its subsections.

An Eligible Project is a convergent project. For CMF purposes, a convergent project must have:

- 1) A Television Component made available by:
 - a) One or more CRTC-licensed traditional, scheduled broadcasters
 - and/or
 - b) One or more CRTC-licensed video-on-demand (VOD) servicesand
- 2) Any or all of the following:
 - a) One or more Digital Media Components (defined under [section 3.2 DM](#))
 - b) The Television Component made available to Canadians by one or more CRTC-licensed video-on-demand services
 - c) The Television Component made available to Canadians by a Canadian entity through non-simulcast digital distribution

In 2)c above, “Canadian” has the meaning ascribed in subsection 1106(1) of Canada’s *Income Tax Act*, “non-simulcast” means not made available simultaneously with the television broadcast, and “digital distribution” means any form of electronic distribution over a digital network to an end user, including internet-VOD, digital download, electronic sell-through, digital rental, and wireless/mobile distribution. It does not include distribution of physical media, such as mail-order DVD rentals/sales.

A Television Component made available via one or more CRTC-licensed VOD services cannot, by itself, satisfy the requirements of both 1) and 2) above for the same Eligible Project at the same time. Where VOD is relied on for the CMF’s “convergent project” requirements, Applicants must elect whether VOD is considered under 1) or 2) above. Where fees for the Canadian VOD Right are part of the Eligible Licence Fee, the VOD exploitation associated with those fees is considered part of the Television Component under 1)b above, and thus cannot be used to meet the requirements of 2) above. (However, the foregoing sentence does not apply where a Terms of Trade Agreement between the Canadian Media Production Association and a Canadian broadcaster governs the Television Component of the Eligible Project.)

To meet the requirements of 2) above, CRTC-licensed VOD and non-simulcast digital distribution must be made available to Canadians within 18 months of completion and delivery to the broadcaster of the Television Component.

Where there is a Digital Media Component, the television and Digital Media Components must be associated with each other and must enhance the viewer/user’s experience of each.

Broadcasters are limited in the amount of the Performance Envelope they can commit to projects that meet 2) above by relying only on 2)b and/or 2)c. See [section 3.2.DM](#) below, and section G.6 in the [Performance Envelope Manual](#), for more information.

3.2.TV The Television Component

3.2.TV.1 Essential Requirements

A Television Component must meet the Essential Requirements listed here. For a series, the Essential Requirements apply to every episode of the cycle, even if all episodes are not submitted for CMF funding. The CMF solely decides whether a project meets the Essential Requirements and its interpretation shall prevail.

- 1) The project will be certified by the Canadian Audio-Visual Certification Office (CAVCO) and has achieved 10/10 points (or the maximum number of points appropriate to the project), as determined by the CMF using the CAVCO scale.

Note: For In-house Programming only, CRTC project certification as a “Canadian program” will be accepted in lieu of CAVCO certification for the purposes of meeting Essential Requirement #2.

- 2) Underlying rights are owned, and significantly and meaningfully developed, by Canadians.
- 3) The project is shot and set primarily in Canada.

Further details on Essential Requirements and permissible genre-specific exceptions are in [Appendix A](#) of these Guidelines. This Appendix includes other important information and is an integral part of these Guidelines.

3.2.TV.1.1 Audiovisual Treaty Coproductions

With respect to the eligibility of audiovisual treaty coproductions to access the CMF, these Essential Requirements shall be interpreted so as to treat the treaty coproduction partner as “Canadian.”

Accordingly, the term “Canadians” in Essential Requirement 2, and the term “Canada” in Essential Requirement 3 include the coproduction country. The 10/10 points referenced in Essential Requirement 1 must be attained by citizens of Canada or the coproducing country.

Essential Requirement 1: for information on audiovisual treaty coproduction between Canada and other territories please see [Telefilm Canada's treaty coproduction guidelines](#).

3.2.TV.2 Genres of Programming

The CMF supports the following genres: drama, documentary, children's and youth, and variety and performing arts. The CMF defines each in [Appendix A](#) of these Guidelines.

The following is a non-exhaustive list of genres and programming formats that are not eligible to apply to the CMF: sponsored productions, sports, news, game shows, current affairs, public affairs, lifestyle productions, “how-to” productions, reality television, instructional television, infomercials, music videos, formal or curriculum-based educational programs, foreign format buys without significant Canadian adaptation and creative contribution, magazine productions, talk shows, “talkshows culturels,” non-cultural galas and award shows¹, reporting and current events, religious programs, fundraising productions, benefits, tributes, promotional productions, pep rallies, travelogues and interstitials.

Note: Some flexibility exists for children's and youth programming. See [Appendix A](#) for more information.

3.2.TV.3 Canadian Ownership and Control

The Television Component must meet these criteria:

- a) It is under Canadian ownership and Canadian executive and creative control.
- b) It is under the financial control of Canadian citizens or permanent residents.
- c) It is, and has been, controlled creatively and financially by a Canadian production company during all phases of production, from development through post-production. Moreover, all distribution and exploitation rights are owned and initially controlled by a Canadian production company.
- d) Generally, no more than 49% of the production financing/final cost is provided by a single non-Canadian entity, person or related entity (via licence fees, distribution advances, goods and services and/or equity investment). Interim lending of more than 49%, however, may be provided by a non-Canadian arm's-length entity in the business of lending money and taking security.
- e) The Applicant retains and exercises all effective controls or approvals consistent with those of a producer. This includes control and final approval of creative decisions and production financing, distribution and exploitation, and preparation and final approval of the budget, subject to reasonable and standard approval rights customarily required by arm's-length financial participants, including Canadian broadcasters and distributors.

¹Cultural award shows and galas that meet the CMF's Variety and Performing Arts definition shall be considered eligible programming.

- f) The Applicant owns all rights (including copyright) and options necessary for the production and its distribution in Canada and abroad (with appropriate case-by-case exceptions for a purchased format), and retains an ongoing financial interest in the project.

Note: The interpretation of these criteria shall allow Canadian audiovisual treaty coproductions to access the CMF.

3.2.TV.4 Miscellaneous Requirements

The Television Component must meet these criteria:

- a) It conforms to the Canadian Association of Broadcasters' (CAB) Code of Ethics and to all programming standards endorsed by the Canadian Radio-television and Telecommunications Commission (CRTC), including the CAB Violence Code and the CAB Equitable Portrayal Code.
- b) It is closed-captioned if it contains narrative, dialogue or lyrics. Exceptions may be permitted for projects targeting children under the age of five, projects in Aboriginal languages that do not use the Roman alphabet, and live-to-air productions.
- c) It is a new production. A new production is one which is not substantially a repackaged version of a previously produced production. In the case of a series, the CMF will consider the entire cycle to determine if the project is a repackaging (e.g. some "making-of", "best-of" and/or "catch-up" episodes may be permitted). Projects comprised mainly of stock footage may be new productions provided the footage is not merely repackaged in whole or large segments for the project.
- d) Generally, the CMF expects a production to begin principal photography/key animation within the fiscal year in which it is funded or within three months thereafter. Special considerations may be made, for example, for projects that need to capture a time-sensitive event or for projects that are required to commence production during the period in which the CMF is closed to funding applications (e.g. December to March).

Note: an applicant commencing production before CMF funding is confirmed does so at its own risk.

- e) It, or any version of it, has not been broadcast/presented on any platform prior to its application for CMF funding.

3.2.TV.5 Eligible Licence Fee Requirements and Conditions

Note: Where a Terms of Trade Agreement between the Canadian Media Production Association and a Canadian broadcaster governs the Television Component of an Eligible Project, the CMF will deem a fair market value licence fee under that agreement to be an Eligible Licence Fee under these Guidelines notwithstanding anything to the contrary in this section or any of its subsections, with the exception that section 3.2.TV.5(e)(i) below still applies. More information is available on the CMF website in the document "[CMF approach to projects governed by a Terms of Trade Agreement](#)" (September 15, 2011).

The Television Component must have Eligible Licence Fees which meet the applicable Licence Fee Threshold (see [section 3.2.TV.5.1](#)).

Eligible Licence Fees are:

- a) Cash fees
- b) Paid by a Canadian broadcaster
- c) To the CMF Applicant

- d) Which are in exchange for the Canadian Broadcast Right and/or the Canadian VOD Right
- e) All of which is subject to one or more current, legally binding contract(s) – i.e. broadcast licence agreement(s)

Note: The CMF will consider the applicability of this section to In-house Programming case by case.

Aspects of an Eligible Licence Fee:

a) Cash Fees

Cash fees must be genuine, industry standard, fair market value and non-recoupable. Fees cannot include facilities, goods or services, equity, a producer time-buy, donations or corporate sponsorship monies negotiated and obtained by the Applicant, tax credits or any arrangement which, in the CMF's assessment, does not constitute a genuine cash licence fee. Fees cannot be reduced once the CMF has entered into a production financing agreement with the Applicant. The foregoing does not preclude a Canadian broadcaster from contributing an equity investment, services, facilities, or other fees in addition to a cash Eligible Licence Fee.

In cases where the provision of a licence fee is wholly or partially dependent on a buyback of services from the licence fee provider, the CMF may elect to deduct the value of the services or facilities from the total value of the licence fee, for the purposes of determining Eligible Licence Fee amounts for Licence Fee Threshold assessment; this determination will be made on a case-by-case basis.

b) Canadian broadcaster

A Canadian broadcaster described in (b) above is a broadcaster licensed by the CRTC, including private, public, educational, specialty, pay-per-view broadcasters, and CRTC-licensed VOD services.

c) Applicant to the CMF

See [section 3.1](#). Eligible Licence Fees may be paid by the Canadian broadcaster either directly to the Applicant, or indirectly via an intermediary Canadian corporation affiliated with both the Applicant and the Canadian broadcaster.

d) Canadian Broadcast Right and Canadian VOD Right

The Canadian Broadcast Right is the right of a Canadian broadcaster to broadcast the Television Component of the Eligible Project on a traditional, scheduled broadcast platform in Canada in the language of the broadcaster in question during the Maximum Term. The Canadian VOD Right is the right of a CRTC-licensed video-on-demand service to make the Television Component of the Eligible Project available on a CRTC-licensed video-on-demand service in Canada in the language of the VOD service in question during the Maximum Term.

The Canadian Broadcast Right and the Canadian VOD Right must be separately identified and valued.

The Canadian Broadcast Right and the Canadian VOD Right cannot include:

- i) Broadcast or VOD rights for non-Canadian territories.
- ii) Other Rights (home video, merchandising, new media, theatrical, non-theatrical, online distribution, online broadcast/streaming, distribution on a mobile device, or any other rights analogous to these) for Canadian or non-Canadian territories.
- iii) An ownership, profit, repayment or recoupment position in the Eligible Project.

- iv) Rights in excess of the Maximum Term as described at [section 3.2.TV.5.2](#) below.

A broadcaster or an Eligible Distributor (as defined in the CMF Standard Recoupment Policy, see [Appendix B](#)) associated with the broadcaster may acquire rights other than the Canadian Broadcast Right or Canadian VOD Right as long as those rights are not part of the rights being acquired in exchange for the Eligible Licence Fee. All such rights must be valued and paid for separately.

e) The broadcast licence agreement terms and conditions

A broadcast licence agreement:

- i) Must include an unconditional commitment by the broadcaster to broadcast the Television Component closed captioned, in peak viewing hours, within 18 months of completion and delivery of the production. Should the broadcaster fail to comply with these broadcast requirements the licence fee will be deemed not to be an Eligible Licence Fee. The CMF will consider requests for an extension to this period case by case. "Peak viewing hours" is defined by the CMF as 7:00 pm to 11:00 pm, with an exception for some Children's and Youth programming as described in Appendix A. For second and subsequent window broadcasters, the commitment to air the production in peak viewing hours within 18 months will start at the beginning of those broadcasters' licence periods.

Note: The CMF may waive the broadcast requirement for pilots where both the broadcaster and Applicant agree, upon completion and delivery of the project, that the pilot should not be broadcast.

- ii) Cannot restrict the Applicant's ability to exploit non-Canadian broadcast rights, with the exception of traditional broadcast spill-over protections and exclusive world premiere rights. Where exclusive world premiere rights are taken by a broadcaster, licence agreements must provide for waiver of the world premiere rights if a bona fide sale to a foreign entity is made, provided the foreign entity agrees not to broadcast the program within six months of delivery to the Canadian broadcaster. To be clear, a broadcaster cannot hold world premiere rights longer than six months from delivery if a bona fide sale has been made to a foreign broadcaster.
- iii) Cannot include the acquisition of French-language rights by an English-language broadcaster or of English-language rights by a French-language broadcaster, with the exception of dual-language broadcast channels. The dual-language broadcaster in such cases must specify to the CMF the licence fee paid for each language right acquired. No single-language licence shall prevent the exploitation of the other language rights by the producer.
- iv) Cannot confer upon the broadcaster or VOD service a right of last refusal for any rights other than additional broadcast windows for the currently licensed project/cycle. This means a broadcaster cannot acquire a right of last refusal for broadcast windows for future cycles or versions of the project. Broadcasters may acquire the right of first negotiation and/or last refusal for additional broadcast windows for the currently licensed project/cycle.
- v) For the purposes of series television, cannot include co-terminus rights clauses. Co-terminus clauses (i.e. clauses that extend the terms of existing licences to the end of the term of the renewal licence with no additional payment) are prohibited in eligible licence agreements for renewed series, but these licences may include rights of first negotiation and/or last refusal for extension of licences for existing episodes of the series.

3.2.TV.5.1 Licence Fee Thresholds

A “Licence Fee Threshold” is the minimum amount of Eligible Licence Fees that a project must receive from one or more broadcasters to be eligible for CMF funding. The Licence Fee Threshold amounts for each genre are as follows:

All Eligible Costs in this section refer to the Television Component only.

DRAMA PROGRAMMING

LANGUAGE	PROJECT		
	TYPE	ELIGIBLE COSTS	LICENCE FEE THRESHOLD
ENGLISH	All projects	Less than \$800,000 per hour	45% of Eligible Costs or \$315,000 per hour, whichever is less
	Series or one-offs	\$800,000 per hour or more	\$315,000 per hour
	Movies of the Week (MOW) and Mini-series	\$800,000 per hour to \$1,857,143 per hour	\$235,000 per hour
		More than \$1,857,143 per hour	12.5% of Eligible Costs
	Half-hour pilots	More than \$700,000 per half-hour	\$205,000 per half-hour
	1-hour pilots	More than \$1.75 million per hour	\$525,000 per hour
FRENCH	All projects (excl. MOWs and mini-series)	Less than \$250,000 per hour	50% of Eligible Costs
	All projects (excl. MOWs and mini-series)	\$250,000 per hour or more but less than \$800,000 per hour	23% of Eligible Costs
	All projects (excl. MOWs and mini-series)	\$800,000 per hour or more	20% of Eligible Costs
	Mini-series	All	20% of Eligible Costs
	Movies of the Week (MOW)	All	\$150,000 per project

VARIETY AND PERFORMING ARTS PROGRAMMING

LANGUAGE	PROJECT		
	TYPE	ELIGIBLE COSTS	LICENCE FEE THRESHOLD
ENGLISH	Variety and Performing Arts	Less than \$750,000 per hour	40% of Eligible Costs or \$240,000 per hour, whichever is less
		\$750,000 or more per hour	\$240,000 per hour
FRENCH	Variety	Less than \$750,000 per hour	50% of Eligible Costs
		\$750,000 or more per hour	25% of Eligible Costs
	Performing Arts	All	20% of Eligible Costs

DOCUMENTARY PROGRAMMING

LANGUAGE	PROJECT		
	TYPE	ELIGIBLE COSTS	LICENCE FEE THRESHOLD
ENGLISH	One-offs and mini-series (excluding feature length documentaries)	Less than \$400,000 per hour	30% of Eligible Costs or \$100,000 per hour, whichever is less
	Series	Less than \$400,000 per hour	40% of Eligible Costs or \$100,000 per hour, whichever is less
	All projects (excl. feature-length documentaries)	\$400,000 to \$750,000 per hour	\$100,000 per hour
	All projects (excl. feature-length documentaries)	\$750,000 per hour or more	10% of Eligible Costs
	Feature-length documentary	All	10% of Eligible Costs
FRENCH	All projects (excl. feature-length documentaries)	Less than \$100,000 per hour	35% of Eligible Costs
	All projects (excl. feature-length documentaries)	\$100,000 per hour to \$400,000 per hour	20% of Eligible Costs
	All projects (excl. feature-length documentaries)	More than \$400,000 per hour to \$750,000 per hour	15% of Eligible Costs
	All projects (excl. feature-length documentaries)	More than \$750,000 per hour	10% of Eligible Costs

	Feature-length documentary	All	10% of Eligible Costs
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CHILDREN'S AND YOUTH PROGRAMMING

LANGUAGE	PROJECT		
	TYPE	ELIGIBLE COSTS	LICENCE FEE THRESHOLD
ENGLISH	All Projects	Less than \$750,000 per hour	25% of Eligible Costs or \$160,000 per hour, whichever is less
	All Projects	\$750,000 or more per hour	\$160,000 per hour
FRENCH	Live-action projects	less than \$750,000 per hour	35% of Eligible Costs
	Live-action projects	\$750,000 or more per hour	15% of Eligible Costs
	Animation		10% of Eligible Costs

For audiovisual treaty coproductions, the CMF Licence Fee Thresholds will be calculated on the Eligible Costs of the Canadian portion of the production's global budget as certified by Telefilm Canada's Business Affairs and Certification Department.

The entirety of the Eligible Licence Fees contributing to meeting the Licence Fee Threshold must be used in the production financing of the Television Component.

3.2.TV.5.2 Licence Terms

The CMF shall assess the maximum allowable period of all broadcast windows granted in consideration for Eligible Licence Fees (Maximum Term). The Maximum Term, in the aggregate and including both exclusive and non-exclusive terms is:

- Children's and youth, documentary, and variety and performing arts projects: 6 years
- English-language drama projects: 7 years
- French-language drama projects: 5 years

The start of the licence term shall begin at the contractually agreed-upon term commencement date, as negotiated between the Applicant and the broadcaster. The term is the period in which a broadcaster has the right to exploit a program. In the case of a series, the term is measured from the commencement date of the first episode and not the commencement dates of each episode.

For clarity, the start of the term and the first air date may not always coincide. By way of example, a broadcaster's term may be from September 1, 2015 to September 1, 2021, but the broadcaster may choose to make the first broadcast date November 15, 2015. For eligibility purposes, the licence term begins on September 1, 2015.

Applicants can incorporate licences in excess of the Maximum Term within the financial structure. Only that portion of the licences, however, within the Maximum Term will be used for the purposes of all CMF calculations, including Licence Fee Threshold assessment, allowable Performance Envelope contributions and applicable Performance Envelope calculations. Licences that commence within the Maximum Term but extend beyond it will be pro-rated to match the Maximum Term set for each genre.

The Maximum Term does not apply to licences acquired by broadcasters for Affiliated Programming and In-house Programming.

3.2.TV.5.3 Treatment of Other Rights

All Other Rights that a Canadian broadcaster or a Canadian VOD service chooses to acquire or to substantially restrict the Applicant from exploiting must be separately identified and valued from the Canadian Broadcast Right or Canadian VOD Right (as applicable). Other Rights include (but are not limited to) the following:

- i) Free Internet broadcast/distribution.
- ii) Paid Internet broadcast/distribution.
- iii) Mobile/wireless distribution.
- iv) Original digital content rights.
- v) Electronic sell-through and/or digital rental.
- vi) DVD, Blu-ray, or other compact video device distribution.
- vii) Theatrical distribution.
- viii) Non-theatrical distribution (e.g., educational institutions and airlines).
- ix) Merchandising and ancillary rights.

All of the above-listed Other Rights and any right which is not encompassed by the above, whether currently existing or developed in the future, shall be ascribed the meaning as commonly understood and in accordance with the standards of the television, digital media and communications industries. Broadcasters and producers are free to further delineate separate rights within or in addition to these categories, but the above list represents the minimum degree of distinct rights valuation in an eligible broadcast licence agreement.

All Other Rights acquired by a Canadian broadcaster or Canadian VOD service must be subject to a "use it or lose it" provision that requires the broadcaster/VOD service to exploit the right(s) within 12 months of that broadcaster/VOD service's first broadcast/premiere of the Television Component, failing which the rights revert to the producer without restriction. For Other Rights not acquired by a Canadian broadcaster or Canadian VOD service, the broadcast licence agreement cannot restrict the Applicant's ability to exploit the Other Rights for longer than 12 months from that broadcaster/VOD service's first broadcast/premiere of the Television Component.

Where the CMF provides an equity investment to the Television Component, Other Rights acquired by a Canadian broadcaster or Canadian VOD service must:

- a) Be exploited in accordance with the CMF's Standard Recoupment Policy, with the broadcaster acting as a distributor for the purposes of that policy. For rights under paragraphs i-v above only, the CMF may consider a 50/50 gross revenue sharing arrangement between the producer and the broadcaster (or other arrangement that is no less preferable to the CMF than a 50/50 gross revenue share); or
- b) For rights under paragraphs i-iv above only, be paid for at a reasonable, fair-market value.

The CMF will apply this section in an adaptable and purposive manner, with the objectives of promoting transparency in the rights market, maximizing the availability of CMF-funded content on multiple platforms for the benefit of Canadian audiences, and maximizing the CMF's return on investment when the CMF is an equity investor.

3.2.DM Digital Media Components

A Digital Media Component must be an audiovisual, multimedia, or interactive project that:

- a) Is associated with the Television Component funded by the CMF
- b) Is made available to the Canadian public by way of a digital network, including internet and mobile
- c) Is rich and substantial

To be clear, "Digital Media Component" refers to original content that is separate and distinct from the Television Component.

A rich and substantial Digital Media Component provides a coherent and added-value digital or social media experience to the audience before, during or after the broadcast of the Television Component. It expands the television viewer's experience beyond simple fact-finding about the Television Component and aims to augment engagement towards the Television Component.. It can be either one or a mix of the following:

1. Interactive or linear original content related to the Television Component but created specifically to be consumed on digital media platforms.
2. Activities and applications using digital and social media aimed at locating, leveraging or building audiences.
3. Interactive online activities or applications providing a synchronised experience during the broadcast of the Television Component.

Digital media content that is not rich and substantial is not considered a CMF-eligible Digital Media Component, and therefore is not eligible to meet the requirements of [section 3.2\(2\)](#) or to receive funding as described at [section 2.3.1](#).

Broadcasters must commit at least 60% of their Performance Envelope to Eligible Projects that include a rich and substantial Digital Media Component (see section G.6 of the [Performance Envelope Manual](#) for more information).

With the exception of [section 3.2.DM.4](#), [section 3.2.DM](#) and its subsections apply to all Digital Media Components associated with a CMF-funded Television Component, whether or not the Digital Media Component is funded by the CMF.

3.2.DM.1 Canadian Content

A Digital Media Component must meet the following criteria:

- a) Its underlying rights are owned, and significantly and meaningfully developed, by Canadians.
- b) It is produced in Canada, with at least 75% of its Eligible Costs being Canadian costs.

Digital media coproductions are eligible if they comply with the [Framework for international digital media coproductions](#).

3.2.DM.2 Ineligible Content

The following is a non-exhaustive list of types of content that are not eligible as a Digital Media Component: industrial, corporate, or primarily promotional projects, curriculum-based projects, and system software.

3.2.DM.3 Canadian Ownership and Control

A Digital Media Component must meet the following criteria:

- a) It is under Canadian ownership and Canadian executive and creative control.
- b) It is under the financial control of Canadian citizens or permanent residents,
- c) The Applicant retains and exercises all effective controls or approvals consistent with those of a producer.
- d) The Applicant owns all rights (including copyright) and options necessary for the production and distribution of the digital media project in Canada and abroad (with appropriate case-by-case exceptions for a purchased format), and retains an ongoing financial interest in the project.

Note: Interpretation of these criteria shall allow CMF access to international coproductions that have an acceptable degree of Canadian ownership and control. Digital media coproductions are eligible if they comply with the [Framework for international digital media coproduction](#).

3.2.DM.4 Broadcaster Minimum Financing and Term

A Digital Media Component funded by the CMF must receive minimum financing from a Canadian broadcaster of 10% of the component's Eligible Costs. This minimum financing must be in cash. It cannot include facilities, goods or services, a producer time-buy, donations or corporate sponsorship monies negotiated and obtained by the Applicant, tax credits or any arrangement which, in the CMF's assessment, does not constitute genuine cash financing. Where there are multiple Digital Media Components (e.g. a website, a mobile application, and a game), the 10% minimum financing requirement applies to each eligible component.

The maximum allowable period granted in consideration of the minimum financing from a Canadian broadcaster should follow the licence terms acquired by each broadcaster for the Television component.

3.2.DM.5 Miscellaneous Requirements

A Digital Media Component:

- a) Must be made available to the Canadian public in a meaningful way. What is meaningful in a particular instance will depend on the nature of the project and its distribution plan. The CMF will decide case by case, but unless there is an acceptable distribution/exploitation plan to the contrary, the CMF considers that making the project available to the Canadian public for at least 3 months contemporaneously with the associated Television Component will be meaningful.

- b) Cannot contain elements of excessive violence, sexual violence, or sexual exploitation or elements which are obscene, indecent or child pornography within the meaning of the Criminal Code (as amended from time to time), or libellous or in any other way unlawful.
- c) Must, when the CMF funds it, be new content. The CMF will not fund an already existing Digital Media Component.